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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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APR - 2 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)

)
Replacement of Part 22 and Part 90)
of the Commission's Rules to)
Facilitate Future Development of)
Paging Systems)

WT Docket No. 96-18

)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF METROCALL, INC.

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TABLE OF CONTENTS

SUMMARY	i
I. Summary of Comments	1
II. The Record Reflects Opposition to MTA Geographic Licensing Areas	2
III. Geographic Licensing	7
IV. Incumbent Licensees are Entitled to Interference Protection	8
V. Permissive Modifications are Good, Secondary Licensing is Bad	9
VI. Auctions	11
CONCLUSION	14

SUMMARY

Metrocall's Reply Comments focus specifically on the 929/931 MHz paging issues in this rulemaking proceeding; in particular, the wide-area licensing proposals, and the auction proposals. A fair reading of the numerous comments filed in this proceeding leads to these conclusions: (1) the vast majority of paging operators, large and small, are opposed to MTA geographic licenses; (2) opinions are evenly divided for and against any form of geographic licensing for paging systems; (3) there is virtual unanimous opinion that incumbent licensees are entitled to interference protection under any new FCC licensing scheme; and, (4) the majority of paging operators are opposed to any form of auctions for paging licenses on statutory, practical, and competitive grounds.

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To: The Commission

REPLY COMMENTS OF METROCALL, INC.

Metrocall, Inc. ("Metrocall"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits these Reply Comments in response to the Comments filed in the Commission's Notice of Proposed Rule Making¹ ("NPRM") in the above-captioned proceeding.

I. Summary of Comments

Metrocall's Reply Comments focus specifically on the 929/931 MHZ paging issues in this rulemaking proceeding; in particular, the wide-area licensing proposals, and the auction proposals. A fair reading of the numerous comments filed in this proceeding leads to these conclusions: (1) the vast majority of paging operators, large and small, are opposed to MTA geographic licenses; (2) opinions are evenly divided for and against any form of geographic licensing for paging systems; (3) there is virtual unanimous opinion that incumbent licensees are entitled to interference protection under any new FCC licensing scheme; (4) the majority of

¹ FCC 96-52 (released February 9, 1996).

paging operators are opposed to any form of auctions for paging licenses on statutory, practical, and competitive grounds.

II. The Record Reflects Opposition to MTA Geographic Licensing Areas.

Since it is rare to find consensus about anything in the paging industry, it is particularly striking to note that the vast majority of paging operators disagree with the FCC's premise that MTAs would "form the most appropriate geographic area boundaries for paging systems" Cf. NPRM at ¶ 34. One might expect opinions on this issue to be evenly divided between large and small carriers; but, that is not the case. Carriers as large as Ameritech, MobileMedia, PageAmerica, and Metrocall, echoed the common sentiment of smaller carriers: MTAs do not reflect the natural size or development of most paging systems, and are an inappropriate basis for licensing these systems.²

Rather, the clear consensus is that paging systems have developed primarily as local services. Even in the case of regional or nationwide paging services, commenters have explained that these networks typically consist of a series of local, "Economic Area" or "BTA" or "SMSA" size systems that are linked together by radio, telephone or satellite control. Thus, the imposition of arbitrary MTA licensing areas on these operational systems, would serve no purpose other than to force incumbent operators to waste money on FCC auctions and unnecessary system build-outs. These resources would not be so squandered if paging operators were left alone to respond to the unique requirements of local customer demand. That is why the

² The paging industry's trade association has advocated MTA licenses; however, the Comments filed in this proceeding suggest that this is a minority position. See PCIA Comments.

clear consensus is opposed to MTA licenses.³

Metrocall agrees that MTAs do not invariably reflect the actual size and development of existing paging systems; that is why Metrocall has suggested that the FCC adopt a more flexible geographic licensing scheme; one that would allow for a range of large to small geographic licenses. Metrocall is a nationwide paging carrier, but, like other nationwide carriers who have commented in this docket, Metrocall knows from experience that customer demand for paging services does not invariably resemble arbitrary MTA borders. Paging service is not comparable to telephone or even cellular radiotelephone service; often it does not make economic sense to blanket an entire MTA with paging transmitters (even assuming that reasonably priced transmitter sites could be located throughout such vast territories), if customer demand does not warrant such widespread coverage.

Demand for paging services is typically concentrated in densely populated areas. That is why it makes sense to invest the substantial sums of money it takes to build a paging network in those market areas that will serve the majority of interested customers. That is also why in many cases smaller geographic areas, such as SMSAs or BTAs, "best mirror" the natural size and development of existing paging systems.

Attached hereto as Reply Exhibit One is a copy of the FCC's MTA map for the 900 MHz SMRS auctions. That map graphically depicts the problems that will be caused if the FCC uses only MTA borders to define "appropriate" geographic licenses for paging services. For example, a typical paging system licensee in Spokane, Washington, might be interested in expanding its

³ It should come as no surprise that the few parties who favor MTAs already hold nationwide licenses, and would presumably not have to bid for or build MTAs. See, e.g., Comments of Paging Network, Inc., AirTouch Paging, AT&T Wireless, and MTel.

service area to include Coeur D'Alene, Idaho, just across the state line. Under the FCC's tentative proposal, if that Spokane licensee wanted to obtain a license in Coeur D'Alene, it would be forced to bid for the entire Spokane-Billings MTA (number 42), which covers the entire state of Montana.

Similarly, the licensee of a Minneapolis/St. Paul system interested in expanding into adjacent unserved areas, would be required under the FCC's proposal to bid for, and ultimately construct, all of Minnesota, plus, all of North Dakota and South Dakota; all three states are included within the Minneapolis/St. Paul MTA (number 12). It is this sort of unnecessary bidding and building that most commenters agree makes no practical or regulatory sense; typical paging growth patterns bear no or only an occasional semblance to this sort of state-by-state approach.

Metrocall agrees that *some* MTAs accurately reflect the typical paging customer's needs. The New York MTA is an example of a densely populated geographic area, that does accurately reflect "typical" paging customer service usage and needs. The problem expressed by the vast majority of commenters; however, is that, as these illustrations show, one geographic "size" does not fit every paging system. The FCC must recognize and acknowledge this fact, or risk a finding that its conclusions concerning MTA licenses are arbitrary, capricious, and wholly unsupported by record evidence.

Metrocall's Comments proposed an appropriate Solomononic solution to the concerns expressed by the majority of commenters in this docket who are opposed to MTA licensing: the FCC could adopt flexible geographic licensing areas, of different sizes, which would more accurately reflect the true size of existing composite interference areas. See Metrocall

Comments at pp. 7-9. This compromise would: (1) eliminate site-by site licensing and its attendant administrative headaches; (2) maintain a reasonably level playing field between large and small carriers (larger carriers who already serve 70% of an MTA would automatically qualify for that MTA license; small carriers that cover substantial portions of smaller BTAs, SMSAs, or EAs, would automatically qualify for a geographic license for their service areas); and (3) allow the FCC to hold auctions for any unserved areas outside of these licensed geographic areas, if they are subject to mutually exclusive applications.

Metrocall has proposed that the Commission establish a deadline by which incumbent operators are to submit requests for specific wide-area authorizations (it could be for any one of several FCC-specified geographic regions: BTA, SMSA, EA, or MTA, so long as the operator covers 70% or more of that geographic region). Those requests would be placed on Public Notice to provide parties in interest the opportunity to file petitions to deny. Alternatively, the paging industry could help the FCC devise a software program to automatically calculate, based on licensed and authorized transmitter sites, which paging companies are already entitled to these geographic licenses on a given frequency. In either case, these "tentative geographic licensees" would be placed on Public Notice, with a very brief period to notify the FCC of any miscalculations. Unless a petitioner with legal standing could demonstrate, under statutory standards for a "prima facie" case, that an incumbent is not entitled to that geographic license, the incumbent would be granted that license.

Since the FCC will have to determine where everyone is licensed prior to commencing any auctions for the infamous paging "white space" (as was the case with 900 MHZ SMRS auctions; the FCC cannot determine appropriate up-front bid deposits until it determines what

percentage of the population in a particular geographic area is unserved by licensed paging operators), Metrocall's proposal would not pose any additional administrative burdens on the agency or the industry.

Once these geographic license determinations for incumbents have been made, the FCC could expeditiously determine where there are any pending "MX" applications for particular geographic areas, and publish an appropriate Public Notice to that effect. Those MX applications for specific geographic licenses could be auctioned off relatively quickly (presumably, many of these long-pending applicants will simply dismiss their applications because they were speculative, or, they have been pending for so long that other business plans have intervened).

Finally, once all incumbent licenses and pending applications have been processed in this manner, the FCC could proceed to accept applications for new, geographic service area licenses for specific frequencies. Applicants could file short form requests for specific geographic licenses, they could be MTA, BTA, or other appropriate FCC-designated service areas (an appropriate "mix" of geographic sizes would be determined based on the comments filed in this docket). These short form applications would be subject to 30-day mutually exclusive filings. In the event of an MX situation between a larger MTA applicant and a smaller BTA applicant, the "larger" proposal would establish the comparative bidding standards: the MX parties would be required to pay up-front bidding fees for the larger proposed service area, and the bidding would be based on the larger of the two proposals.

If the FCC's statutory assumptions are correct, and auctions do not arbitrarily stimulate demand for geographic licenses; then it shouldn't matter if there are potentially more auctionable

licenses with smaller geographic areas available; the demand for these licenses should be unaltered. Some of these licenses, be they large or small, will attract no bidders, others will attract multiple bidders. The FCC may end up with more or less than the 1800 MTA auctions its NPRM proposes; however, the number of auctions actually held will reflect true market demand for these licenses; not agency fiat.

In short, this proposal will provide all paging licensees who have operated in the public interest the benefits of geographic licensing; it will not impose any more of an administrative burden on the FCC than the NPRM's proposal would; and, it will avoid the potentially disastrous prospects of defaults and overbuilding that would be generated by holding 1800 simultaneous auctions for arbitrary MTA markets that do not necessarily reflect the needs of existing paging systems. This proposal would also adequately address the concerns raised by most of the comments filed in this rulemaking proceeding.

III. Geographic Licensing.

With respect to the broader concept of geographic licensing, opinions are pretty evenly split. Many carriers, large and small, see administrative advantages in geographic licensing, so long as the geographic areas accurately reflect the natural sizes and needs of operational paging systems. See, e.g., Comments of Paging Partners Corp., Source One Wireless, and Metrocall.

On the other hand, there is considerable opposition to the very notion of geographic licensing for paging systems. Many carriers, large and small, adamantly contend that paging systems have naturally evolved on a site-by-site basis, because that is what customer demand dictates. Many commenters observed that geographic licensing will lead to inefficient use of scarce paging spectrum. Other, smaller carriers observed that geographic licensing will put them

at a competitive disadvantage against larger carriers. See, e.g., Comments of Ameritech Mobile Services, Inc., Ameritel Paging, Inc., ATS Mobile Telephone, et al., Datafon, Inc., et al., Liberty Cellular, MobileMedia Communications, Inc., PageAmerica Group, PagePrompt USA, and Pioneer Telephone Cooperative.

Although the record reflects perhaps more opposition than support for the concept of geographic licensing, the tone of the FCC's NPRM surely suggests that the agency is predisposed to adopting geographic licensing rules for paging, if for no reason other than administrative convenience. This, then, is an issue that warrants a comprise.

Metrocall submits that its proposal, to allow bidding for large and small geographic areas as designated by the applicants, adequately addresses the concerns expressed by opponents to geographic licensing. Although in some instances smaller BTA bidders will presumably lose out to MX'd MTA bidders, in other cases, smaller operators should find that they will face lower or no bidding for BTA markets.

IV. Incumbent Licensees are Entitled to Interference Protection.

There is unanimous agreement among the commenters that, under any new licensing scheme that the FCC might adopt, incumbent licensees are entitled to at least the minimum co-channel interference protection that applied to the grant of those licenses. Metrocall and others have pointed out that the FCC's "Interim Licensing" interference protection calculations are inconsistent with applicable Part 22 interference rules, and that the Interim proposal, if permanently adopted, would actually cause a reduction in a licensee's protected service and interference areas. Absent prior notice and an opportunity for hearing, the FCC has no legal authority to adversely modify licensed paging stations. If the Interim proposal was simply an

unintentional error, the FCC should publicly clarify this issue as soon as possible, to assure paging licensees and their customers that they will not suffer any reductions in their paging service coverage.

V. Permissive Modifications are Good, Secondary Licensing is Bad.

There is also virtual unanimity in favor of allowing incumbent licensees the opportunity, prior to any "white space" auctions, to make necessary modifications to their facilities. The consensus is that the FCC's Interim proposal, allowing licensees to make any modifications so long as they do not extend their interference contours, does not adequately meet the needs of the paging industry. Metrocall concurs that such a "permissive" modification rule is of little practical use; moreover, any protracted delays in lifting the freeze or in expanding the definition of a "permissive modification" will have a decided adverse financial impact on the paging industry, and the quality of services provided to customers.

Here's why the FCC's "permissive" modification rule doesn't help: to stay solvent and competitive, paging companies must continually look for new customers, and improve the quality and coverage of their services for existing customers. The FCC's "permissive modification" rule defeats both of these objectives. Metrocall, like most paging companies, typically finds new customers by going into a geographic area that it has not previously served. Under the FCC's Interim proposal, the only way it could do that would be by acquiring an existing paging company in that "new" service area; thus, paradoxically, the FCC's Interim proposal eliminates competition, rather than stimulating it. Similarly, if Metrocall's existing customers demand wider-area coverage in adjacent, unlicensed areas, Metrocall can't provide that coverage under the Interim plan; again, the Interim proposal arbitrarily deprives licensees of

the ability to compete against other paging companies in adjacent service areas.

The FCC's "secondary licensing" proposal does not cure this problem. Metrocall's construction costs, like most paging companies, are financed by a combination of public and private debt and equity. As a condition precedent to virtually every form of financing, Metrocall and its professional advisors must warrant that the Company has an unconditional FCC licensed right to provide service in the area where these funds will be invested. This is standard lending practice in the paging industry. A secondary license, by definition, would not qualify for financing under Metrocall's loan agreements, since there would be the risk that Metrocall would have to accept interference from, or even shut down operations at the request of, a "primary licensee."

For those rare paging companies that would be able to obtain financing to build "secondary licensed" paging systems, the risks will be extraordinary. Once those "secondary systems" are built, and customers are on the air, that operator will have sent up a red flag to competitors and unscrupulous auction bidders that this licensee must win a "primary license" at auction at any cost. If the holder of the secondary license loses the "primary" license at auction, it could find itself in default under the financial arrangements that were used to build that paging system. It seems highly unlikely, faced with these daunting legal risks and financial obstacles, that any paging company will "take advantage" of the FCC's secondary licensing proposal.

Secondary licensing simply increases the likelihood of auction "greenmail" and arbitrarily inflated auction prices, with no countervailing advantages for paging operators, their investors, and customers. At the same time, there is no evidence that the FCC should be concerned about "speculative filings" if it lifts the application freeze. To the contrary, most of

the construction periods for the past two years' worth of speculative filings have expired or are about to expire; presumably, once word spreads that these speculators have lost their entire "investments" in these paging applications, speculative filings will abate.

For the sake of the industry and the customers it serves, the better alternative to the FCC's Interim proposals, in the unanimous opinion of the paging industry, is to lift the freeze right away. Failing that, the FCC should at least adopt modification rules that will allow incumbent operators the right to expand into adjacent, unserved areas.

VI. Auctions.

With the exception of a few large carriers and the Federal Trade Commission, the majority of interested parties are opposed to any type of auctions for new paging licenses. These interested parties oppose auctions because: there is little unlicensed spectrum left to warrant auctions; auctions will place smaller carriers at a competitive disadvantage with larger carriers; they will require construction in areas that do not warrant such capital costs; they will lead to anti-competitive abuse; and, they are not allowed under FCC statutory authority. See, e.g., Comments of PassWord, Inc., Datafon, Inc., Sunbelt Transmission Corp., Page Hawaii, Paging Partners Corp., Teletouch Licenses, Source One Wireless, Inc., USTA, and AST Mobile Telephone, et al.

The tone of the comments in support of auctions, on the other hand, is that of weary resignation rather than unbridled support. Other than the FTC, no one seems to really "want" auctions; rather, they are resigned to the apparent fact that this agency seems predisposed to use auctions for all commercial land mobile licenses, regardless of the merits.

The fact is that the "benefits" that are typically cited in support of auctions could easily

be obtained by other non-auction means. For example, the Federal Trade Commission favors auctions as a means of deterring "speculative" filings. The FTC obviously has a grudge in this matter, because it has been saddled with the thankless task of explaining to thousands of duped "investors", that the \$7,000 that they spent on an application mill-generated application, did not give them a valuable paging license to sell at a profit.

For Metrocall and other legitimate paging operators who have spent considerable time and money over the past two years suggesting to the FCC ways to deter speculative filings (none of which were heeded), it seems a little more than ironic that the paging industry should now be saddled with auctions, for the sins of speculators. Indeed, the FTC's comments in this proceeding cited a complaint from an "investor" who would not have bought one of these speculative paging applications, if the FCC had warned the public sooner about the risks of these speculative filings. But now, the paging industry and its customers, not the application mills, will suffer from the additional bidding and construction costs associated with license auctions.

Auctions are obviously only an indirect means of punishing frequency speculators (the direct approach would be to reinstate anti-trafficking rules and financial requirements, and to require construction bonds or other evidence of an applicant's *bona fide* intent to construct and operate a paging station). The direct harm from auctions is visited upon *bona fide* applicants, who have no choice but to bid for licenses, if there are no other means of obtaining them.

Nevertheless, before the FTC and the FCC conclude that auctions will deter speculators, they ought to ensure that these conclusions are reasonably supported by record evidence. The on-going PCS and recently concluded MDS auctions strongly suggest that this assumption is fatally flawed. Application mills have been aggressively involved in these auctions; they have

merely shifted their efforts toward auctionable licenses by soliciting thousands of "general partners", who have paid thousands of dollars for the "right" to bid for a wireless license. If the FCC doesn't do something soon about this very real problem, the paging industry will have more than a minor "speculators" problem on its hands. Metrocall and other paging companies will be forced to bid against well-financed auction speculators for essential paging licenses.

Until these auction problems are resolved, and in light of the legitimate concerns of the parties who are opposed to paging auctions, Metrocall's "compromise" solution, suggested in its Comments, would seem to reasonably meet the FCC's goals and the paging industry's needs. Metrocall has suggested that auctions be held only in the event of *bona fide* mutually exclusive applications for specific geographic licenses. See Metrocall Comments at pp. 20-21. That way, the FCC and incumbent operators will have the opportunity to "ferret out" speculative bidders in advance of bidding, and, auctions will be held only where there is legitimate demand, between two or more *bona fide* applicants, for a particular frequency in a given geographic area.

Under Metrocall's proposal, there should be fewer "speculative" auctions, and the FCC will not have to contend with the almost unimaginable administrative burden of conducting thousands of simultaneous, multi-round auctions. With Metrocall's proposal simple and swift auctions could be held when MX situations arise. Not only does this proposal make good common sense, it also more closely complies with the FCC's limited statutory authority to auction paging spectrum, than does the NPRM's proposal. See, e.g., Comments of Metrocall at p. 19; Pass Word, Inc; and, 47 U.S.C. §309(j).

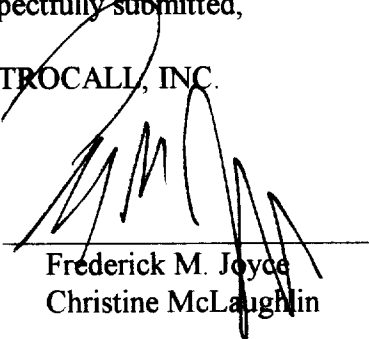
CONCLUSION

For all the foregoing reasons, and the reasons stated in its previously filed Comments, Metrocall respectfully requests that the Commission carefully consider the impact that the proposals in its NPRM will have on incumbent paging licensees, and modify its tentative conclusions to address the legal and factual concerns expressed in Metrocall's and other interested parties' Comments.

Respectfully submitted,

METROCALL, INC.

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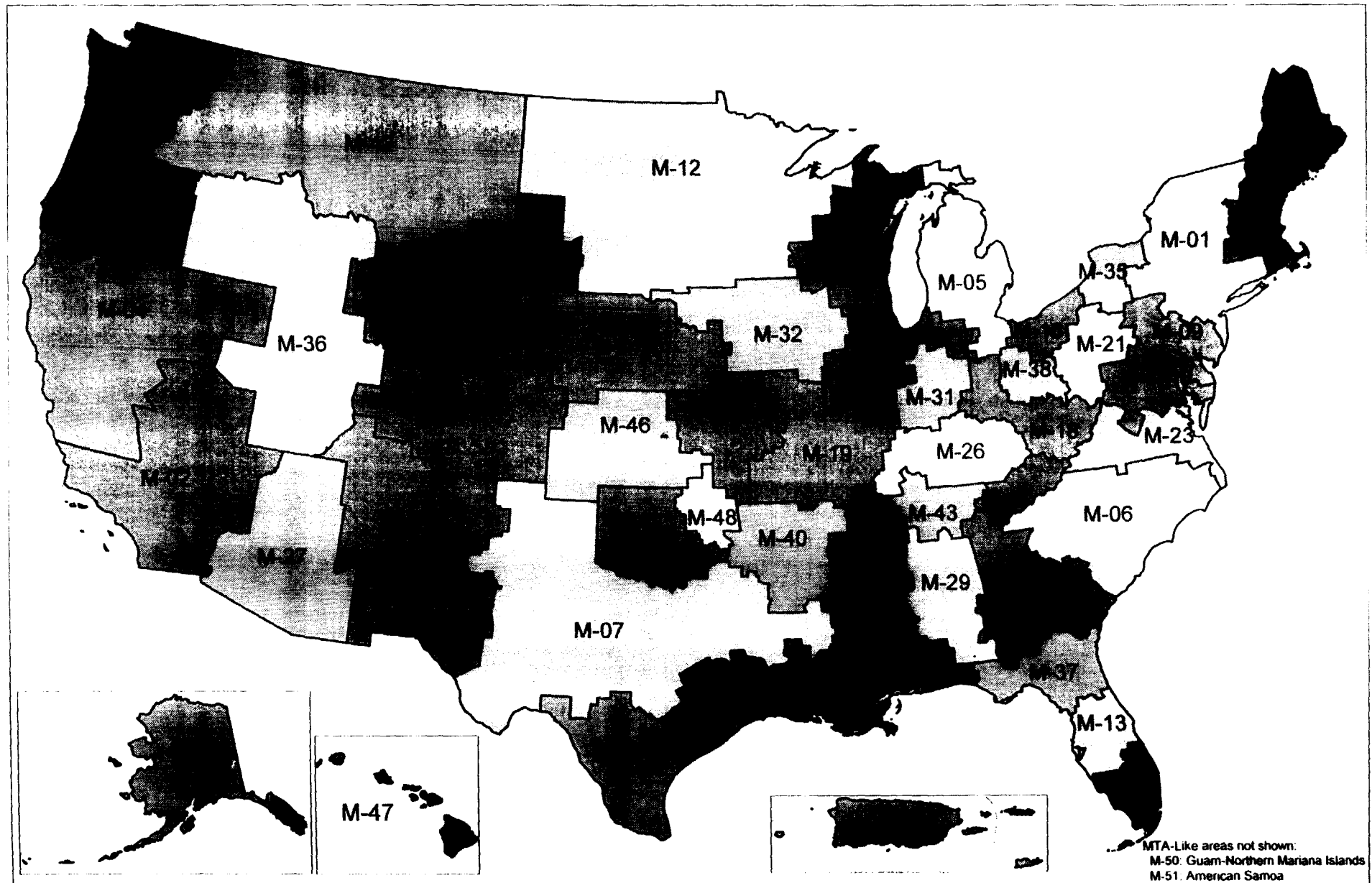
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April 2, 1996

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Federal Communications Commission

REPLY EXHIBIT ONE

CERTIFICATE OF SERVICE

I, Christine McLaughlin, Esq., do hereby certify that on this 2nd day of April, 1996, copies of the foregoing Reply Comments of Metrocall, Inc. were mailed, postage prepaid, to the following:

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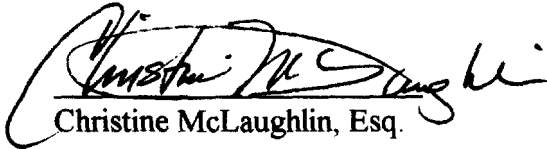
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A handwritten signature in black ink, appearing to read "Christine McLaughlin", is written over a horizontal line.

Christine McLaughlin, Esq.

* Denotes Hand Delivery